

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-4208

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALLEN RYAN ALLEYNE,

Defendant - Appellant.

On Remand from the Supreme Court of the United States.
(S. Ct. No. 11-9335)

Submitted: September 12, 2013 Decided: September 24, 2013

Before WILKINSON, KING, and AGEE, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Michael S. Nachmanoff, Federal Public Defender, Mary E. Maguire, Assistant Federal Public Defender, Patrick L. Bryant, Appellate Attorney, Richmond, Virginia, for Appellant. Neil H. MacBride, United States Attorney, Alexandria, Virginia, Michael R. Gill, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Allen Alleyne was convicted of using or carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A) (2006), an offense that carries a mandatory minimum sentence of five years' imprisonment. At sentencing, the district court found, by a preponderance of the evidence, that the firearm had been brandished, a finding that increased the mandatory minimum term to seven years. The district court imposed an imprisonment term of seven years. Alleyne appealed his sentence, and we affirmed, finding that Alleyne's challenge was foreclosed by Harris v. United States, 536 U.S. 545 (2002) (holding that a defendant's right to trial by jury is not violated when a mandatory minimum sentence is imposed based on judicial fact finding). See United States v. Alleyne, 457 F. App'x 348 (4th Cir. 2011).

The Supreme Court subsequently vacated this court's judgment with respect to Alleyne's sentence, overruled Harris, and remanded for resentencing in light of the jury's verdict. See Alleyne v. United States, 133 S. Ct. 2151 (2013). Accordingly, we vacate the sentence and remand for resentencing, consistent with the Supreme Court's decision in Alleyne. We dispense with oral argument because the facts and legal

contentions are adequately resented in the material before this court and argument will not aid the decisional process.

VACATED AND REMANDED